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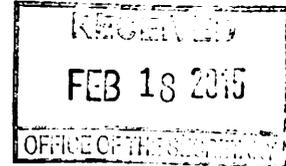
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16155

In the Matter of

Nicholas B. Rowe,

Respondent.



DIVISION OF ENFORCEMENT'S REPLY TO
RESPONDENT ROWE'S OPPOSITION TO MOTION FOR SUMMARY DISPOSITION

Respondent does not raise a genuine issue of material fact regarding the Commission's Motion for Summary Disposition. Instead, Respondent makes two arguments:

- 1) that Advisers Act § 203(f) [15 U.S.C. § 80b-3(f)] entitles him to an evidentiary hearing; and,
- 2) that he disputes the facts underlying the NH Bureau of Securities Consent Order and his "consent" in entering into that order.

The first of these arguments is legally deficient and the second constitutes a collateral attack on the Consent Order not proper in this forum. Respondent's arguments do not create a material question of fact about the predicates for the imposition of the bar and the application of the factors laid out by *Steadman v. SEC*, 603 F.2d 1126, 1150 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). Accordingly, the Division respectfully requests that the Court grant the Division's Motion for Summary Disposition and impose a permanent associational bar, including all collateral bars, against the Respondent.

A. Advisers Act Section 203(f) Does Not Guarantee a Right to an Evidentiary Hearing.

Respondent cites the portion of the Advisers Act § 203(f) [15 U.S.C. § 80b-3(f)] requiring “notice and opportunity for hearing” to claim that summary disposition may not be granted here. This argument misunderstands what constitutes an opportunity for hearing. “The Commission’s rule [Rule 250] reflects a well-established distinction between a hearing on the pleadings and an evidentiary hearing at which witnesses testify and are subject to cross-examination.” *Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010)(construing language of Advisers Act § 203(f)). The D.C. Circuit Court of Appeals has found that Advisers Act § 203(f) does not “require an evidentiary hearing where there is no genuine and substantial issue of fact that requires a hearing.” *Id.*, citing *John D. Companos & Sons, Inc. v. Food & Drug Admin.*, 854 F.2d 510, 518 (D.C. Cir. 1988). Here, Respondent has not raised a genuine and substantial issue of fact requiring a hearing and summary disposition for the Division is appropriate.

B. Respondent Contests Facts Underlying the Consent Order He Signed, But Does Not Contest Any of the Predicates for the Imposition of Associational Bars.

Respondent’s filing offers unsupported arguments and assertions about the nature of the NH Bureau of Securities Regulation actions, the FINRA arbitration, and the extent of his consent to the Consent Order. He does not, however, contest:

- 1) that he was associated with an investment adviser;
- 2) that an order was issued against him by the NH Bureau of Securities, a state securities commission;
- 3) that the order barred him from engaging in the business of securities in New Hampshire; or
- 4) that the order is based on violations of New Hampshire laws prohibiting fraudulent, manipulative, or deceptive conduct in the purchase and/or sale of securities.

Although Respondent's Answer did not deny that the Consent Order constituted a final order, he does challenge that fact here. Respondent states "the Consent Order will be contested in New Hampshire Superior Court. It is not final until there is a judicial review of this matter." Resp. Ex. A., p. 12. Respondent's argument ignores the plain language of the Consent Order. See Consent Order, p. 9, ¶ IV.2 ("Respondents agree to waive their right to an administrative hearing and any appeal therein under this chapter."). Respondent's declared intention to challenge the Consent Order at a later date does not prevent it from being final under the legal definition: "a 'final decision' is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Ray Haluch Gravel Co. v. Central Pension Fund of Intern. Union of Operating Engineers*, 134 S.Ct. 773, 779 (2014); *Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)(regarding agency order, "considerations in determining finality are whether the process of administrative decisionmaking has reached a stage where judicial review will not disrupt the orderly process of adjudication and whether rights or obligations have been determined or legal consequences will flow from the agency action"). Clearly, by its own terms and by legal definition, the Consent Order is a final order.

The remaining factual matters raised by the Respondent either go to the underlying merits of the Consent Order he signed or are irrelevant to this proceeding. See Respondent's Opp., p. 2 (concerning Respondent's decision to sign the Consent Order); Respondent's Ex. A, pp. 1-3 (purportedly quoting various individuals connected with the NH Bureau of Securities Regulation proceedings, the FINRA arbitration, and his own lawyer), p. 4 (unsupported assertions concerning Respondent's view of the NH proceedings against him and the SEC); pp. 5-6 (Respondent's historical review of "individuals who followed the law and brought about injustice"); pp. 7-9

(challenging various portions of the NH Consent Order); pp. 10-13 (concerning Respondent's decision to sign the Consent Order); pp.13-20 (challenging the factual findings in the Consent Order and the veracity of those who provided evidence against him). Respondent may not collaterally attack the Consent Order or re-litigate the underlying facts here. See, e.g., *Jeffrey L. Gibson*, Exchange Act Release No. 57266 (Feb. 4, 2008), 2008 WL 294717 (injunction entered by consent).

CONCLUSION

For the reasons stated above and in the Division's Motion for Summary Disposition, the Division respectfully requests that the Court grant the Division Summary Disposition in its favor, and impose a permanent associational bar, including all collateral bars, against the Respondent.

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its attorneys,



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Date: February 13, 2015

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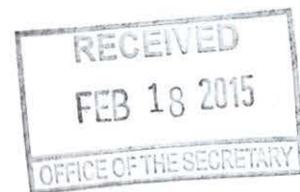
DIVISION OF ENFORCEMENT

Marc J. Jones
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(617) 573-8947

February 13, 2015

By Fax and Overnight Delivery

Mr. Brent Fields
Securities and Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington, DC 20549



Re: *In the Matter of Nicholas Rowe*
Administrative Proceeding File No. 3-16155

Dear Mr. Fields:

Enclosed please find an original and three copies of the Division's Reply to Respondent's Opposition to Motion for Summary Disposition.

Very truly yours,

A handwritten signature in blue ink that reads "Marc J. Jones".

Marc J. Jones

Enclosures

cc: Honorable Jason S. Patil (by email)
Nicholas Rowe (by overnight delivery)